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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER SENN; JASON )  
BEWLEY; JERED FULLEN, )  
DISABILITY RIGHTS WASHINGTON, )  
and JEWELS HELPING HANDS, )  
Plaintiffs, )  
vs. )  
CITY OF SPOKANE, a municipal )  
corporation; SPOKANE COUNTY, a )  
municipal corporation; OZZIE )  
KNEZOVICH, in his official capacity as )  
Spokane County Sheriff; CRAIG MEIDL, )  
in his official capacity as Spokane Police )  
Chief; )  
Defendants. )

NO. 2:22-cv-254-SAB

PLAINTIFFS' AMENDED  
MOTION FOR PRELIMINARY  
DECLARATORY AND  
INJUNCTIVE RELIEF

PLAINTIFFS' AMENDED MOTION FOR  
PRELIMINARY DECLARATORY AND INJUNCTIVE  
RELIEF: 1

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## I. INTRODUCTION

Plaintiffs wish to close Camp Hope humanely, safely, and legally, which takes time. Defendants are seeking to avoid the legal requirements imposed by current Circuit caselaw and intend to close Camp Hope regardless of safety or humane considerations, and prior to the Court having an opportunity to rule.

The protections of the United States Constitution apply to all people, including the unsheltered homeless who are forced to live in places that government officials deem undesirable. Indeed, constitutional protections are especially important for the most vulnerable, as these protections often provide the last bulwark against mistreatment based solely on social status. This case seeks to ensure that hundreds of Spokane residents who are struggling to find housing, and hope, do not lose their fundamental rights and dignity due to political opportunism.

Residing in Camp Hope, under an agreement between the landowner and local service providers pursuant to the State's Right of Way Initiative, is neither a crime nor a public nuisance. While some individuals who reside in this location may commit criminal offenses and be subject to arrest and prosecution for these offenses, our Constitution forbids guilt by association and collective punishment of an entire group based on the acts of a few members. Yet this is essentially what Defendants in this action intend to do..

Since filing this suit, Plaintiffs have engaged with counsel for Defendants to reach an agreement to delay forcible removal until the Spokane community has

1 adequate alternative housing, as required under Ninth Circuit caselaw. These  
2 attempts at resolution have not resulted in progress and in fact have led to further  
3 constitutional violations. After this action was filed, Defendants Knezovich and  
4 Spokane County have initiated searches of the homes of Plaintiffs and other Camp  
5 Hope residents by flying helicopters low over Camp Hope and surveilling residents  
6 inside their homes using advanced infrared imaging. ECF No. 14. These searches  
7 were done without a judicial warrant or lawful authority and were done in apparent  
8 retaliation for Plaintiffs filing the present lawsuit and for other actions taken to  
9 petition their city and county governments for redress of grievances.

10 Then, on December 6<sup>th</sup>, 2022, dozens of uniformed officers from the City  
11 and County of Spokane along with Spokane Valley law enforcement arrived at  
12 Camp Hope without notice and handed out leaflets warning residents that the  
13 Camp will be closed. [https://www.spokesman.com/stories/2022/dec/06/this-camp-  
14 is-to-be-closed-confusion-frustration-af/](https://www.spokesman.com/stories/2022/dec/06/this-camp-is-to-be-closed-confusion-frustration-af/). Defendants are intentionally withholding  
15 from residents and the public the date on which they plan to conduct this unlawful  
16 sweep, meaning it could happen at any moment. *Id.* This sweep is planned despite  
17 hard objective evidence that Spokane presently cannot provide safe or adequate  
18 housing for its homeless, not even for the small subset of homeless who reside at  
19 Camp Hope. *Id.*

20 Plaintiffs therefore have no choice but to seek preliminary declaratory and  
21 injunctive relief, enjoining Defendants from clearing all residents from Camp Hope  
22 and from continuing to conduct helicopter overflights and infrared imaging

1 searches. Absent Court intervention, the City and County will continue to violate  
 2 the constitutional rights of homeless people, particularly those with disabilities.  
 3 Plaintiffs easily satisfy the standard for a preliminary injunction. Plaintiffs have  
 4 sufficiently demonstrated a likelihood of success on the merits of their  
 5 constitutional and legal claims. Plaintiffs will be irreparably harmed by the planned  
 6 actions of Defendants. And given the constitutional issues at stake, the balance of  
 7 the equities and public interest are best served by a preliminary injunction  
 8 preventing the City from doing grave harm to an incredibly vulnerable population.

## 9 **II. STATEMENT OF FACTS**

10 Plaintiffs Bewley, Fullen, and Senn live at Camp Hope alongside other  
 11 residents who are constituents of organizational Plaintiffs Jewels Helping Hands  
 12 and Disability Rights Washington. Declarations of Bewley; Fullen; Senn; and  
 13 Garcia. All reside here with the permission of the landowner, Washington State  
 14 Department of Transportation. Decl. Garcia ¶ 24. At Camp Hope, residents get the  
 15 supports they need such as food (Decl. Bewley ¶ 6), shelter (Decls. Bewley ¶ 6;  
 16 Fullen ¶ 2; Senn ¶ 5), employment (Decls. Bewley ¶ 9; Fullen ¶ 2; Senn ¶ 4),  
 17 healthcare (Decls. Fullen ¶ 3; Senn ¶ 6), privacy (Decls. Fullen ¶ 4; Senn ¶¶ 5,7),  
 18 stability (Decls. Bewley ¶ 6; Fullen ¶ 4; Senn ¶¶ 5-6), and a community of support  
 19 (Decls. Fullen ¶¶ 2,4; Senn ¶¶ 6-7). Defendants vow to take all of this away by  
 20 arresting everyone who refuses to leave Camp Hope when Defendants arrive with  
 21 their armed law enforcement officers. *See, e.g.* ECF No 14 ¶¶ 4.16-4.20; Decl.  
 22 Garcia ¶¶ 13-15. This has led to a great amount of fear in the homeless community.

1 Decl Garcia ¶ 16. The alternatives of solo camping and congregate shelters deprive  
 2 all residents the benefit of the fundamental human needs they are currently getting  
 3 met at Camp Hope and are looking to get met in more stable housing settings. *See,*  
 4 *e.g.* Decls. Fullen ¶ 4; Senn ¶¶ 5-7, Garcia ¶¶ 19-22.

5 If Defendants sweep the camp and force people to leave Camp Hope before  
 6 they find stable housing, people with disabilities will be especially harmed due to  
 7 their disabilities. One example is “S.H.,” who is 65, uses a wheelchair, and is  
 8 unable to use the left side of her body due to a stroke, Decl. Garcia ¶ 20. If forced  
 9 to abruptly leave Camp Hope, S.H. will either have to sleep on her own in the  
 10 streets or go to jail because no shelter will accept S.H. and provide her with the  
 11 level of assistance in hygiene and personal care tasks she currently receives at  
 12 Camp Hope. *Id.* Similarly, “L Senior” and “L Junior” would have to choose  
 13 between living alone on the streets or in jail, because a shelter would not take and  
 14 is not a good fit for L Junior’s schizophrenia-related needs for monitoring,  
 15 redirection, and space from others—needs that his father, who promised L Junior’s  
 16 mother that he would look after their son following her death earlier this year, are  
 17 able to get met at Camp Hope. *Id.* ¶ 21.

18 Another example is C.J., a 68-year-old who uses a walker because she lost  
 19 her ability to independently use her left leg, and is cared for by her adult son. *Id.* ¶  
 20 22. C.J. and her son are limited in which shelters they could even consider, as most  
 21 are limited to only one gender. *Id.* ¶ 5. Moreover, C.J. and her son would likely not  
 22

1 be able to access any shelter because of her support needs stemming from the loss  
 2 of control of her left leg. *Id.* ¶ 22.

3 An estimated 15% of the residents have disabilities and face the same  
 4 problem with shelter inaccessibility even if they wanted to select that option. *Id.* ¶  
 5 23. Barred from residing in any of the shelters, they will be forced onto the street  
 6 or into institutions instead of living in the community as they prefer. *Id.* Many will  
 7 be at risk of serious injury or death if forced to live on the streets. *Id.*

8 Beyond the fact that shelters do meet many of the needs Camp Hope is  
 9 currently meeting for all residents, and the additional needs of disabled residents  
 10 that cannot be met in shelters, there simply are not enough beds within the shelter  
 11 system. The entire number of available beds (or mats as the case may be) has  
 12 never exceeded the number of residents at Camp Hope, nor has it exceeded the  
 13 number of homeless individuals based on the City's official "point in time" census.  
 14 *Id.* ¶ 6.

15 After the filing of the present lawsuit, the Sheriff's Department staged  
 16 helicopter flyovers at the Camp for the next three consecutive nights, circling for  
 17 15-20 minutes each time, using a spotlight to illuminate the site's tents and  
 18 grounds. ECF No. 14, ¶¶ 4.35-37. The helicopter was low enough that campers at  
 19 the site could feel roto backwash and the noise level from the helicopter was louder  
 20 than any traffic from the adjacent streets. *Id.* The third night the helicopter  
 21 appeared to be using infrared scanning to see into tents, RVs, and the other  
 22 temporary shelters. *Id.* On November 22, 2022, Defendant Knezovich held a press

1 conference along with Spokane Mayor Woodward and Spokane County  
 2 Commissioner Kuney, in which he acknowledged that the Sheriff's Office had  
 3 conducted these helicopter overflights to observe the camp, that they had used  
 4 infrared imaging, and that his office did not first obtain a warrant. See  
 5 <https://www.youtube.com/watch?v=Ak3h6Tl160s>. (Last visited November 27,  
 6 2022) at 22:30-58; 32:45-57. Knezovich also referred to the encampment as an  
 7 "act of protest" and "unlawful assembly" and repeated his threat that "soon, we  
 8 will be posting that camp with a notice that it's gonna be closed." *Id.* 27:45-28:00;  
 9 29:40-56."

10 On December 6, more than a dozen uniformed officers from the Spokane  
 11 County Sheriff's Office, as well as the Spokane and Spokane Valley police  
 12 departments, arrived in force at Camp Hope to deliver flyers to residents stating:  
 13 "This Camp is to be closed." [https://www.spokesman.com/stories/2022/dec/06/this-](https://www.spokesman.com/stories/2022/dec/06/this-camp-is-to-be-closed-confusion-frustration-af/)  
 14 [camp-is-to-be-closed-confusion-frustration-af/](https://www.spokesman.com/stories/2022/dec/06/this-camp-is-to-be-closed-confusion-frustration-af/). The flyers and public statements  
 15 made by Defendants do not provide residents of Camp Hope with a specific date  
 16 on which Defendants intend to forcibly remove the residents from their current  
 17 homes. *Id.* Mark Gregory, public information officer for the Spokane Sheriff's  
 18 Office, explained that this was an intentional decision, stating to the media: "We're  
 19 never going to say when we're going to – if we had to – go down and close the  
 20 camp, because that wouldn't be smart of us to do." *Id.* Mr. Gregory continued:  
 21 "The camp is going to be closed, but we want to do it without ever using law  
 22

1 enforcement to move people out of the camp . . . (A sweep) is not our goal, but if  
 2 we have to, we will do that.” *Id.*

3 Plaintiffs and other residents at Camp Hope thus face imminent and  
 4 irreparable harm from a planned law enforcement sweep, with no alternative place  
 5 to go, and without consideration of the needs of people with disabilities.

### 6 III. LEGAL ANALYSIS

7 A plaintiff seeking preliminary relief under Federal Rule of Civil Procedure  
 8 65 must establish “that he is likely to succeed on the merits, that he is likely to  
 9 suffer irreparable harm in the absence of preliminary relief, that the balance of  
 10 equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
 11 *Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit applies a  
 12 “sliding scale” approach to balancing these elements; “a stronger showing of one  
 13 element may offset a weaker showing of another.” *All. for the Wild Rockies v.*  
 14 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Thus, when the likelihood of grave  
 15 irreparable injury is palpable and the balance of equities tips sharply in plaintiffs’  
 16 favor, the plaintiffs need only “demonstrate a fair chance of success on the merits  
 17 or questions serious enough to require litigation.” *Arc of Cal. v. Douglas*, 757 F.3d  
 18 975, 993-94 (9th Cir. 2014) (internal quotations and citation omitted). All of the  
 19 *Winter* factors weigh in favor of an injunction here.

#### 20 A. Plaintiffs are likely to succeed on the merits of their claims.

21 To show a likelihood of success on the merits, the moving party need not  
 22 demonstrate that they will prevail, but only that it is “more likely than not” that

1 they will. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *Leiva-Perez v.*  
 2 *Holder*, 640 F.3d 962, 966 (9th Cir. 2011). Further, Plaintiffs must show likelihood  
 3 of success on the merits of only one of their claims. *Rodde v. Bonta*, 357 F.3d 988,  
 4 998 n.13 (9th Cir. 2004). Plaintiffs are more likely than not to succeed on each of  
 5 their claims.

6 **1. Plaintiffs are likely to succeed on their claims under the Fourth  
 7 and Fourteenth Amendment to the U.S. Constitution and under  
 8 Article 1, Section 7 of the Washington State Constitution.**

9 Plaintiffs' rights to be free from unwarranted governmental invasion of their  
 10 liberty and property are clearly established and should be beyond dispute.

11 The Fourth Amendment to the U.S. Constitution "protects the right of the  
 12 people to be secure in their persons, houses, papers and effects, against  
 13 unreasonable seizures and searches." U.S. Const. Amend. IV. "A seizure  
 14 conducted without a warrant is per se unreasonable under the Fourth  
 15 Amendment—subject only to a few specifically established and well delineated  
 16 exceptions." *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (2005).

17 The Washington State Constitution protects this fundamental right even  
 18 more plainly, stating: "No person shall be disturbed in his private affairs, or his  
 19 home invaded, without authority of law." Wash. Const. Article I, Section 7.

20 The Due Process Clause of the Fourteenth Amendment prevents the state  
 21 from "depriv[ing] any person of life, liberty, or property, without due process of  
 22 law." U.S. Const. Amend. XIV. Where an individual is deprived of a property

1 interest, the Supreme Court has long held that the gravity of a deprivation is  
 2 irrelevant to the question of whether account must be taken of the Due Process  
 3 Clause. *See Goss v. Lopez*, 419 U.S. 565, 579 (1975). “[T]o put it as plainly as  
 4 possible, the State may not finally destroy a property interest without first giving  
 5 the putative owner an opportunity to present his claim of entitlement.” *Logan v.*  
 6 *Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982).

7 Here, Defendants have announced their intentions to deprive all residents of  
 8 Camp Hope of their liberty and property without the authority of law. The  
 9 residents of Camp Hope are not committing a crime simply by being present on  
 10 state-owned property with the support of the State pursuant to the Right of Way  
 11 Initiative. They do not create a public nuisance simply by living their lives in the  
 12 small space assigned to them, even if a neighboring resident engages in  
 13 misconduct. Defendants thus have no legal authority to disturb all residents of  
 14 Camp Hope in their personal affairs or seize any property by sweeping the camp.

15 It is not surprising, or even unreasonable, for the Camp’s neighbors,  
 16 community members, and political leaders to be frustrated when a group of  
 17 unhoused individuals moves into an area knowing that some have committed crime  
 18 and disturbed the peace. The instinct to respond by forcibly removing or  
 19 ostracizing the perceived problem group is common and historically human. But  
 20 acting on this instinct is forbidden by our Constitution, as articulated by the  
 21 Supreme Court:

1 May the State fence in the harmless mentally ill solely to save its  
 2 citizens from exposure to those whose ways are different? One might  
 3 as well ask if the State, to avoid public unease, could incarcerate all  
 4 who are physically unattractive or socially eccentric. Mere public  
 5 intolerance or animosity cannot constitutionally justify the deprivation  
 6 of a person's physical liberty.

7 *O'Connor v. Donaldson*, 422 U.S. 563, 575–76 (1975)

8 Plaintiffs are also likely to prevail on their claims related to the Sheriff's use  
 9 of helicopter overflights and infrared searches of the homes of Plaintiffs and other  
 10 residents. It is well established that infrared searches of homes require a warrant  
 11 under both the Fourth Amendment and Article 1, Section 7 of the Washington  
 12 Constitution. *Kyllo v U.S.*, 533 U.S. 27 (2001) (The government's use of a thermal  
 13 imaging device to explore details of the home that would previously have been  
 14 unknowable without physical intrusion is a "search" and is presumptively  
 15 unreasonable without a warrant); *State v. Young*, 123 Wn.2d 173, 184 (1994) ("The  
 16 use of the thermal detection device to perform a warrantless, infrared surveillance  
 17 violated the Washington State Constitution's protection of the defendant's private  
 18 affairs."). One does not need to have a traditional home to have this privacy right  
 19 against intrusive searches of their living spaces. *State v. Pippin*, 200 Wash.App.  
 20 826 (2017) (holding that law enforcement's actions in lifting the tarp of an  
 21 unhoused person's lean-to shelter violated Article 1, Section 7 of the Washington  
 22 Constitution). Here, the Sheriff has acknowledged that he his office has used  
 infrared technology that allows him to look inside of private living spaces and did  
 not have a warrant to do so. Plaintiffs are likely to prevail on this claim.

1 Worse, the Sheriff and other Defendants continue to express their intentions  
 2 to engage in unconstitutional conduct in the future, to include the sweep and  
 3 closure of Camp Hope and conduct more unlawful searches. Plaintiffs are likely to  
 4 prevail on their claims under the Fourth and Fourteenth Amendment to the U.S.  
 5 Constitution and under Article 1, Section 7 of the Washington State Constitution  
 6 and need preliminary injunctive relief to prevent ongoing harm.

7 **2. Plaintiffs are likely to succeed on their claims under  
 8 the Eighth Amendment to the U.S. Constitution.**

9 The Ninth Circuit has recently issued two rulings prohibiting municipalities  
 10 from arresting or otherwise punishing people for sleeping outside when they have  
 11 no access to shelter, pursuant to the Eighth Amendment's prohibition on cruel and  
 12 unusual punishment. In *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019), the court  
 13 held that "so long as there is a greater number of homeless individuals in [a city]  
 14 than the number of available beds [in shelters]," a city cannot punish homeless  
 15 individuals for "involuntarily sitting, lying, and sleeping in public." *Id.* at 617. That  
 16 is, as long as there are insufficient emergency shelter beds available to homeless  
 17 individuals, "the government cannot criminalize indigent, homeless people for  
 18 sleeping outdoors, on public property, on the false premise they had a choice in the  
 19 matter." *Id.* (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir.  
 20 2006), vacated on other grounds, 505 F.3d 1006 (9th Cir. 2007)).

21 Recently, the Ninth Circuit extended the rule in *Martin* to prohibit a  
 22 municipality's issuance of infractions against homeless people where civil and

1 criminal punishments are closely intertwined and held that class certification can  
 2 be appropriate in cases such as this. *See Johnson v. Grants Pass*, 20-35752, 20-  
 3 35881, at \*48 (9<sup>th</sup> Cir. Sep 28, 2022).

4 Here, Plaintiffs and the residents of Camp Hope have even more  
 5 constitutional protection than was found in *Martin* and *Grants Pass*, as they are not  
 6 sleeping on public sidewalks or parks owned by the City but rather are camped on  
 7 land owned by WSDOT, with WSDOT's support under the Right of Way  
 8 Initiative, while WSDOT and private organizations work toward housing all  
 9 individuals. In contrast to *Martin* and *Grants Pass*, there exist no statutes or  
 10 ordinances giving Defendants authority to cite, charge, or arrest anyone for living  
 11 at Camp Hope. Defendants make up for this lack of authority by provocative  
 12 infrared overflights, unannounced armed delivery of notices of eviction — without  
 13 any stated deadline or hearing opportunity — actions that impact the stability and  
 14 peace of the residents legally and temporarily living at the Camp.

15 **3. Plaintiffs are likely to succeed on their claims under the  
 16 First and Fifth Amendments to the U.S. Constitution**

17 The Supreme Court has declared guilt by association “alien to the traditions  
 18 of a free society and the First Amendment itself.” *NAACP v Claiborne Hardware*,  
 19 458 US 886, 932 (1982). Numerous Supreme Court decisions have established that  
 20 imposing guilt by association violates both the Fifth Amendment, which requires  
 21 that guilt must be personal, and the First Amendment, which guarantees the right  
 22

1 of association. These rules stand even when individuals belong to organizations  
 2 that espouse or engage in illegal acts, as they may only be held responsible for the  
 3 organization's acts if they acted with specific intent to further the illegal acts. *See*,  
 4 *e.g.*, *United States v Robel*, 389 US 258, 262 (1967).

5 In this case, the public comments made by Defendants make plain that the  
 6 primary reason they feel authorized to clear out all residents from Camp Hope is  
 7 that the camp has brought increased crime to the area. There is no evidence,  
 8 however, that named Plaintiffs or the majority of other residents have engaged in  
 9 any criminal activity whatever. There is thus no basis for them to be punished or  
 10 suffer adverse consequences for the increased crime rates, unless they are assessed  
 11 guilt based on their association with (or, more accurately, proximity to) other  
 12 residents who may have committed crimes. This is expressly prohibited under the  
 13 First and Fifth Amendments.

14 Defendant Knezovich has also recently expressed that he views Camp Hope  
 15 itself to be an “an act of protest, and sooner or later it becomes an unlawful  
 16 assembly.” ECF No 14 ¶ 4.39. Defendant Knezovich thus frankly admitted that he  
 17 views Camp Hope as a form of protest, which implicitly means that those at Camp  
 18 Hope are engaged in protected speech. That he intends to stifle this protected  
 19 speech through the removal of all residents makes Plaintiffs very likely to prevail  
 20 on this First Amendment claim.

21 It should be noted that Defendants have ample tools at their disposal to  
 22 counter and prevent crime in the area. They are fully capable and authorized to

1 investigate and arrest individuals based on probable cause and can enter the camp  
 2 to do so.<sup>1</sup> But probable cause must be individualized. Evidence that one or more  
 3 individuals residing at Camp Hope have committed crimes does not provide  
 4 probable cause to remove or arrest all the people who live in Camp Hope. But this  
 5 guilt by association and general distaste for the residents' impoverished condition  
 6 appear to be the only bases for Defendants' announced intention to evict, arrest,  
 7 and seize the property of more than four hundred people.

8       **4. Plaintiffs are likely to succeed on their claims under the ADA.**

9       There is little question that a sweep of Camp Hope would have  
 10 disproportionate effects on people with disabilities and would violate Defendants'  
 11 obligations under the ADA. Many residents of Camp Hope are individuals with  
 12 disabilities who are receiving critical services and accommodations provided  
 13 exclusively at Camp Hope. Decl. Garcia ¶¶ 19-23. Their sudden eviction from  
 14 Camp Hope, with no alternative services in place, would leave them with services  
 15 and accommodations and in great danger of significant harm or death. *Id.* This  
 16 constitutes discrimination on the basis of disability as well as a failure to  
 17 accommodate, in violation of the ADA.

18       Moreover, the actions proposed by Defendants would violate the integration  
 19 mandate set forth in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999). People  
 20

21       

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<sup>1</sup> The Spokane Police Department has made the discretionary choice to not enforce  
 22 the law within Camp Hope, leaving the residents to fend for themselves without  
 police services or assistance. Decl Garcia ¶¶ 25-27.

1 with disabilities currently live at Camp Hope in an integrated community setting of  
 2 their own choosing, with a neighborhood, social services, neighbors, and friends  
 3 surrounding them. Defendants' planned action would likely result in them ending  
 4 up in jails, hospitals or institutions, or on the streets. Decl Garcia ¶¶ 19-23.

5 Removing people with disabilities from their community and placing them in large  
 6 institutional settings of others' choosing is discriminatory segregation and a  
 7 violation of their civil right to live in the most integrated community setting. It is  
 8 thus likely that Plaintiffs would prevail on this claim.

9 **B. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief.**

10 Absent the Court's intervention to enjoin Defendants' plan to clear Camp  
 11 Hope, the Named Plaintiffs and all other residents of Camp Hope will suffer  
 12 irreparable harm. "It is well established that the deprivation of constitutional rights  
 13 'unquestionably constitutes irreparable injury.' *Melendres v. Arpaio*, 695 F.3d 990,  
 14 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also*  
 15 *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

16 The Named Plaintiffs in this case have already been subjected to harm  
 17 resulting from Defendants' repeated threats of arbitrary deadlines by which they  
 18 must vacate their current home or face arbitrary arrest and seizure of their property.  
 19 Decl. Garcia ¶¶ 16-17. This harm is undoubtedly made even worse by mental  
 20 health conditions such as PTSD and anxiety, which are exacerbated by the stress,  
 21 uncertainty, and instability caused by Defendants' pronouncements. Indeed, this  
 22

1 stress and instability may be the motivating factor behind Defendants' threats,  
 2 driven by the intent to coerce Plaintiffs from leaving Camp Hope. This harm will  
 3 only worsen if more threats are made, thus making essential the requested  
 4 declaratory and injunctive relief.

5 The harm that has already been done would be exponentially compounded,  
 6 and would be irreparable, if an injunction is not entered and Defendants are  
 7 allowed to follow through on their plans to sweep Camp Hope and continue to  
 8 conduct unconstitutional searches. This would result in the deprivation of  
 9 constitutional rights, possible arrest, the loss of belongings, and the loss of critical  
 10 services offered at Camp Hope that are critical to residents with disabilities. Given  
 11 that Defendants have now indicated in writing that the camp will be soon closed,  
 12 without giving a date, makes "the threat of irreparable harm . . . sufficiently  
 13 immediate to warrant preliminary injunctive relief." *Boardman v. Pac. Seafood*  
 14 *Grp.*, 822 F.3d 1011, 1023 (9th Cir. 2016) (quoting *Winter*, 555 U.S. at 22).

15 Disability Rights Washington and Jewels Helping Hands will also suffer  
 16 irreparable injury if an injunction is not issued. The Ninth Circuit has recognized  
 17 that an organizational plaintiff's suffering "ongoing harms to [its] organizational  
 18 missions" can constitute irreparable harm. *Valle del Sol Inc v. Whiting*, 732 F.3d  
 19 1006, 1029 (9<sup>th</sup> Cir. 2013).

20 Finally, emotional and psychological harm arising from a violation of  
 21 disability rights law meets the irreparable injury requirement in the context of a  
 22 preliminary injunction. *Chalk v. Orange Cty. Superintendent of Schs.*, 840 F.2d

1 701, 710 (9th Cir. 1988). Without injunctive relief, Plaintiffs and other residents  
 2 with disabilities face the constant possibility that they will be forced out of the  
 3 camp and onto the street without necessary treatment and accommodations, or into  
 4 institutions that deprive them of community integration, and will continue to suffer  
 5 the psychological and emotional harm and loss of rights caused by helicopter  
 6 overflights and infrared searches.

7 **C. The Balance of Equities Favors and Public Interest Weigh Heavily in  
 8 Plaintiffs' Favor.**

9 The third and fourth factors concern the equitable interests at stake in  
 10 granting an injunction: whether the equities favor an injunction, and the impact on  
 11 the public interest. *Winter*, 555 U.S. at 20. The fourth factor primarily considers  
 12 the injunction's impact on non-parties. *League of Wilderness Defenders*, 752 F.3d  
 13 at 766. This includes, for example, non-parties whose rights would otherwise be  
 14 subjected to an unconstitutional statute. *See Klein v. City of San Clemente*, 584  
 15 F.3d 1196, 1208 (9th Cir. 2009). Where the government is a party to the litigation  
 16 and opposes an injunction, the third and fourth Winter factors merge. *See Drakes  
 17 Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). And where, as here,  
 18 Plaintiffs have shown a strong likelihood of success on the merits and irreparable  
 19 harm, "the balance of equities and public interest tip in favor of Plaintiffs." *Los  
 20 Padres Forestwatch v. U.S. Forest Service*, 776 F.Supp.2d 1042, 1052 (N.D. Cal.  
 21 2011). But even without such a strong showing on the first two factors, Plaintiffs  
 22 can easily show the third and fourth factors weigh in favor of an injunction.

1       First, “the protection of constitutional rights is a strong equitable argument  
 2 in favor of issuing the injunction.” *Lavan*, 797 F. Supp. 2d at 1019-20 (granting an  
 3 injunction against the City of Los Angeles, preventing it from seizing and  
 4 immediately destroying property in Skid Row). Defendants are bound by the  
 5 United States and Washington constitutions. Courts have consistently held that the  
 6 public interest is best served by enjoining unconstitutional or unlawful laws and  
 7 conduct, stating: “It is always in the public’s interest to enjoin actions that violate  
 8 an individual’s constitutional rights, all the more so when this is being done in the  
 9 name of their own government.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
 10 2012) (upholding a preliminary injunction against a policy of racial profiling); *see also Awad v. Ziriax*, 670 F.3d 1111, 1131-1132 (10th Cir. 2012); *Diamond House of SE Idaho, LLC v. City of Ammon*, 381 F.Supp.3d 1262, 1279 (D.Idaho, 2019) (holding that the public interest is served by enjoining the implementation of an ordinance that the court found was facially invalid under the Fair Housing Act, because the FHA serves an important public interest).

16       Second, granting an injunction in this case will protect not just the  
 17 constitutional rights of named Plaintiffs but also the rights of the hundreds of  
 18 people who are compelled to live in Camp Hope. As in other cases where courts  
 19 have granted injunctions against facially invalid ordinances or conduct, “the  
 20 ongoing enforcement of the potentially unconstitutional regulations ... would  
 21 infringe not only the [constitutional rights] of [plaintiffs], but also the interests of  
 22 other people” subjected to the same restrictions. *Klein v. City of San Clemente*, 584

1 F.3d 1196, 1208 (9th Cir. 2009). Enjoining Defendants from clearing Camp Hope  
 2 would stop those violations, which weighs heavily in favor of finding that the  
 3 injunction serves the public interest.

4 **IV. THE BOND REQUIREMENT SHOULD BE WAIVED**

5 Where, as here, there is no likelihood of harm to the party enjoined, the  
 6 requirement to post a bond may be dispensed with entirely. *Barahona-Gomez v.*  
 7 *Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).

8 **V. CONCLUSION**

9 For the foregoing reasons, and upon good cause shown, Plaintiffs request the  
 10 Court grant the following preliminary relief:

- 11 (a) A declaratory judgment that Defendants' announced plans to remove all  
 12 people and property from Camp Hope violate Plaintiffs' rights under the United  
 13 States Constitution and the Americans with Disabilities Act;
- 14 (b) A declaratory judgment that Plaintiffs and other current residents of Camp  
 15 Hope are legally entitled to reside at this location so long as they have the consent  
 16 and permission of the property owner, WSDOT;
- 17 (c) A declaratory judgment that Defendants' warrantless use of infrared imaging  
 18 against residents of Camp Hope violates the privacy protections given to all  
 19 persons under the Washington State Constitution;
- 20 (d) A preliminary injunction restraining Defendants from arresting and  
 21 removing residents of Camp Hope from their current location, or seizing their  
 22 property, without specific and individualized probable cause to arrest a person for a

1 criminal offense unrelated to an order given by Defendants to disband, move, or  
2 otherwise leave Camp Hope;

3 (e) A preliminary injunction restraining Defendants from conducting any  
4 helicopter overflights of Camp Hope and/or from utilizing infrared imaging or  
5 similar technology to surveil or record the residents of Camp Hope, without first  
6 obtaining a judicial warrant for such a search.

7 DATED this 7th day of December, 2022.

8 /s/ Jeffry Finer

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## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing  
**PLAINTIFFS' AMENDED MOTION FOR PRELIMINARY DECLARATORY  
AND INJUNCTIVE RELIEF** (plus any exhibits and/or attachments) to be served  
via the method listed below to the following:

NAME & ADDRESS	Method of Delivery
James Bernard King on behalf of CITY OF SPOKANE	<input checked="" type="checkbox"/> CM/ECF System
James Bernard King on behalf of Craig Meidl	<input checked="" type="checkbox"/> CM/ECF System
F Dayle Andersen, Jr on behalf of SPOKANE COUNTY	<input checked="" type="checkbox"/> CM/ECF System
F Dayle Andersen, Jr on behalf of Ozzie Kenezovich	<input checked="" type="checkbox"/> CM/ECF System

DATED this 7th day of December 2022.

/s Andrew Biviano

PLAINTIFFS' AMENDED MOTION FOR  
PRELIMINARY DECLARATORY AND INJUNCTIVE  
RELIEF: 22

***KS B LITIGATION, P.S.***  
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